

Chet Duda  
Name  
HDSP - P.O. Box 650  
Indian Springs, NV, 89020  
1107359  
Prison Number

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COUNSEL/PARTIES OF RECORD	
DEC 30 2016	
CLERK US DISTRICT COURT DISTRICT OF NEVADA	
BY:	DEPUTY

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

Chet Duda  
Plaintiff,  
  
vs.  
  
Brian E Williams, Warden  
Sr. Flores  
Sr. Brettenbach  
cb Choyce  
Sgt. Rivera  
Defendant(s).

2:16-cv-03044-KJD-CWH

CIVIL RIGHTS COMPLAINT  
PURSUANT TO  
42 U.S.C. § 1983

Preliminary Injunctive Relief  
With Rights to Reserve a future  
Jury Trial

A. JURISDICTION

- 1) This complaint alleges that the civil rights of Plaintiff, Chet Duda  
(Print Plaintiff's name)

who presently resides at High Desert State Prison, were

violated by the actions of the below named individuals which were directed against

Plaintiff at High Desert State Prison on the following dates  
(institution/city where violation occurred)

7/28/16 to 7/31/16, 8/1/16, and 11/2/16  
(Count I) (Count II) (Count III)

Make a copy of this page to provide the below information if you are naming more than five (5) defendants

2) Defendant Brian E Williams resides at N/A  
 (full name of first defendant) (address if first defendant)  
 and is employed as Warden. This defendant is sued in his/her  
 (defendant's position and title, if any)  
 \_\_\_ individual ☒ official capacity. (Check one or both). Explain how this defendant was acting

under color of law: Active Warden at H.D.S.P. in charge of staff and Correction Officers

3) Defendant Sr. Flores resides at N/A  
 (full name of first defendant) (address if first defendant)  
 and is employed as Senior Correction Officer. This defendant is sued in his/her  
 (defendant's position and title, if any)  
 \_\_\_ individual ☒ official capacity. (Check one or both). Explain how this defendant was acting

under color of law: A.M. Unit Corrections Officer For Unit 2 C/D

4) Defendant Sr. Brettenbach resides at N/A  
 (full name of first defendant) (address if first defendant)  
 and is employed as Senior Corrections Officer. This defendant is sued in his/her  
 (defendant's position and title, if any)  
 \_\_\_ individual ☒ official capacity. (Check one or both). Explain how this defendant was acting

under color of law: P.M. Unit Corrections Officer For Unit 2 C/D

5) Defendant C/O Choyce resides at N/A  
 (full name of first defendant) (address if first defendant)  
 and is employed as Corrections Officer. This defendant is sued in his/her  
 (defendant's position and title, if any)  
 \_\_\_ individual ☒ official capacity. (Check one or both). Explain how this defendant was acting

under color of law: Alternate Unit Corrections Officer For Unit 2 C/D

6) Defendant Sgt. Rivera resides at N/A,  
(full name of first defendant) (address if first defendant)  
 and is employed as Corrections Officer. This defendant is sued in his/her  
(defendant's position and title, if any)  
 \_\_\_ individual ☒ official capacity. (Check one or both). Explain how this defendant was  
 acting

under color of law: Sergeant in charge over this  
unit and mentioned correction officers

7) Jurisdiction is invoked pursuant to 28 U.S.C. § 1343 (a)(3) and 42 U.S.C. § 1983. If you wish  
 to assert jurisdiction under different or additional statutes, list them below.

N/A

#### B. NATURE OF THE CASE

1) Briefly state the background of your case.

On July 28, 2016, I was moved to cell 2D14. After  
settling in, I noticed my cell mate acting a little weird.  
It did not take long to realize the vent door on the HVAC  
unit was closed. ~~to~~ With this door closed no ventilation  
occured. Temperatures in this cell rose over 100 degrees.  
After several unsuccessful complaints to unit officers,  
I filed an emergency grievance. Much to my surprise,  
the Sergeant's response was, "This is not an emergency  
per AR 740." (See exhibit) I am currently suffering  
from neurological issues from this incident that  
need immediate attention.

#### C. CAUSE OF ACTION

COUNT I

The following civil rights has been violated: 8<sup>th</sup> Amendment Rights-  
"Deliberate Indifferent"

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Supporting Facts: [Include all fact you consider important. State the facts clearly, in your own words, and without citing legal authority or argument. Be sure you describe exactly what each specific defendant (by name) did to violate your rights].

On July 28, 2016, the Plaintiff was moved to cell 2D14. I did not take long to realize the HVAC vent was not pushing any air into the cell. Temperatures in this unit rose well over 100 degrees. It became very uncomfortable and dangerously unbearable.

Over the next 3 days the Plaintiff and cell mate Todd Schwarting made several complaints to Senior Flores and Senior Brettenbach about the extreme ~~heat~~ heat conditions in our cell. Both Senior Officers made attempts to reach maintenance and left messages about no ventilation in the cell.

On the fourth day, the Plaintiff spoke to CO Choyce about the situation and how it was affecting his and his cell mates health. CO. Choyce stated, "There is nothing I can do about it, you will just have to live with the situation." The Plaintiff had enough and filed an "emergency" grievance.

Approximately 2 hours later, Sgt. Rivera knocked on the door. Much to the Plaintiff's surprise, the Sgt.

Count 1 Continued

1 stated, "This was not an emergency situation per  
2 A.R. 740, but I will put in a request to maintenance."  
3 (See exhibit 1)

4 Several hours later, Todd Schwarting had enough.  
5 He filed an "emergency" grievance and received the same results.

6 At evening Chow, the Plaintiff spoke to inmate  
7 Jeremy Watson about the situation. He stated, "the vent  
8 door to the cell is probably closed which is an easy fix."  
9 A few days later, inmate Watson and the plumber were  
10 in the unit. Inmate Watson took it upon himself to ask  
11 the plumber if he could open the access door to the  
12 utility closet to check the H.V.A.C. vent door. Within  
13 30 seconds, fresh cool air was circulating the  
14 cell. Inmate Watson stated that the vent door  
15 was completely closed preventing air to enter the  
16 cell.

17 During the 7 day ordeal, not one Corrections  
18 Officer or maintenance enter into the cell to check the  
19 adverse conditions. They all ignored their duties and  
20 responsibilities as a Corrections Officer to health  
21 concerns, safety, and for welfare of prisoners,  
22 especially after receiving several complaints.

23 This is a textbook example of "deliberate indifference" to  
24 to a prison condition that exposes a prisoner to an  
25 unreasonable risk of serious harm. A violation of the  
26 plaintiff's Eight Amendment Rights.

27 Being locked down in a cell 14-16 hours a day with  
28 temperatures well over 100 degrees has left the Plaintiff  
29 with some neurological issues, needing to seek immediate  
30 medical attention.

COUNT II

The following civil rights has been violated: 8<sup>th</sup> Amendment Rights -  
"Cruel and Unusual Punishment"

Supporting Facts: [Include all fact you consider important. State the facts clearly, in your own words, and without citing legal authority or argument. Be sure you describe exactly what each specific defendant (by name) did to violate your rights].

Even though this may have been unintentional, the  
inactions of four Correction Officers to protect  
the Plaintiff's right to a safe and humane environ-  
ment in prison were violated. Leaving inmates  
in a dangerous environment/situation for 7 days  
after receiving several complaints is cruel  
and unusual punishment - an 8<sup>th</sup> Amendment  
Rights violation. In addition to violating AR 740.  
10

COUNT III

The following civil rights has been violated: 5<sup>th</sup> Amendment Right  
Failure of Due Process

Supporting Facts: [Include all fact you consider important. State the facts clearly, in your own words, and without citing legal authority or argument. Be sure you describe exactly what each specific defendant (by name) did to violate your rights].

Plaintiff's attempt to follow grievance process  
proved futile.

A.R. 740.10 (3) states, "the highest-ranking  
staff member on duty with the aid of an authorized  
department official shall immediately take  
corrective measures necessary to prevent a  
substantial risk of injury or breach of security."  
(See exhibit 3)

The only immediate measure taken was the  
Sergeant personally delivering the "Emergency"  
grievance signed by him stating "Not an emergency-  
file informal grievance per A.R. 740." He mentioned  
that he will contact maintenance and walked  
away, (See exhibit 1).

The Plaintiff's informal grievance was filed in a  
timely manner. (See exhibit 4)

Two months later, the case worker finally  
responds. The Plaintiff was appalled to find the  
(continued Next Page)

D. PREVIOUS LAWSUITS AND ADMINISTRATIVE RELIEF

- 1) Have you filed other actions in state or federal courts involving the same or similar facts as involved in this action? Yes X No. If your answer is "Yes", describe each lawsuit. (If more than one, describe the others on an additional page following the below



COUNT III CONTINUED

1 that the case worker deviates from addressing  
2 the issue with A.R. 740.10 or the dangerous environment.  
3 His excuse, "The Plaintiff is no longer housed in Unit 2D14,  
4 however maintenance has been contacted to take a temp-  
5 erture measurement - Grievance Denied (See exhibit 2)

6 Three months after the fact is a little too late to have  
7 maintenance do "anything"

8 The problem was fixed months ago. But the  
9 the health and welfare of prisoners has been neglected.  
10 The damage has been done. The plaintiff  
11 is having neurological issues and is seeking  
12 professional help outside of the prison medical  
13 staff (ex. UMC, etc.) There is no one at this facility  
14 who is qualified to treat these types of issues.



outline).

- a) Defendants: \_\_\_\_\_
- b) Name of court and docket number: \_\_\_\_\_
- c) Disposition (for example, was the case dismissed, appealed or is it still pending?):  
\_\_\_\_\_
- d) Issues raised: MA  
\_\_\_\_\_  
\_\_\_\_\_
- e) Approximate date it was filed: \_\_\_\_\_
- f) Approximate date of disposition: \_\_\_\_\_

- 2) Have you filed an action in federal court that was **dismissed because it was determined to be frivolous, malicious, or failed to state a claim upon which relief could be granted?**  
 \_\_\_ Yes ☒ No. If your answer is "Yes", describe each lawsuit. (If you had more than three actions dismissed based on the above reasons, describe the others on an additional page following the below outline.)

Lawsuit #1 dismissed as frivolous, malicious, or failed to state a claim:

- a) Defendants: \_\_\_\_\_
- b) Name of court and case number: \_\_\_\_\_
- c) The case was dismissed because it was found to be (check one): \_\_\_ frivolous \_\_\_ malicious or \_\_\_ failed to state a claim upon which relief could be granted.
- d) Issues raised: MA  
\_\_\_\_\_  
\_\_\_\_\_
- e) Approximate date it was filed: \_\_\_\_\_
- f) Approximate date of disposition: \_\_\_\_\_

Lawsuit #2 dismissed as frivolous, malicious, or failed to state a claim:

- a) Defendants: \_\_\_\_\_
- b) Name of court and case number: \_\_\_\_\_

- c) The case was dismissed because it was found to be (check one): \_\_\_\_\_ frivolous  
 \_\_\_\_\_ malicious or \_\_\_\_\_ failed to state a claim upon which relief could be granted.
- d) Issues raised: \_\_\_\_\_  
 \_\_\_\_\_
- e) Approximate date it was filed: \_\_\_\_\_
- f) Approximate date of disposition: \_\_\_\_\_

Lawsuit #3 dismissed as frivolous, malicious, or failed to state a claim:

- a) Defendants: \_\_\_\_\_
- b) Name of court and case number: \_\_\_\_\_
- c) The case was dismissed because it was found to be (check one): \_\_\_\_\_ frivolous  
 \_\_\_\_\_ malicious or \_\_\_\_\_ failed to state a claim upon which relief could be granted.
- d) Issues raised: \_\_\_\_\_  
 \_\_\_\_\_
- e) Approximate date it was filed: \_\_\_\_\_
- f) Approximate date of disposition: \_\_\_\_\_

- 3) Have you attempted to resolve the dispute stated in this action by seeking relief from the proper administrative officials, e.g., have you exhausted available administrative grievance procedures? ☒ Yes \_\_\_\_\_ No. If your answer is "No", did you not attempt administrative relief because the dispute involved the validity of a: (1) \_\_\_\_\_ disciplinary hearing; (2) \_\_\_\_\_ state or federal court decision; (3) \_\_\_\_\_ state or federal law or regulation; (4) \_\_\_\_\_ parole board decision; or (5) \_\_\_\_\_ other \_\_\_\_\_

If your answer is "Yes", provide the following information. Grievance Number <sup>Emergency</sup> ~~Informal~~  
 Date and institution where grievance was filed 8/1/16, 8/3/16 H.D.S.P.

Response to grievance: Both the Emergency and Informal  
were denied (See exhibits)

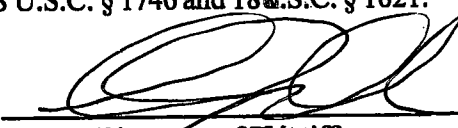
-----  
**E. REQUEST FOR RELIEF**

I believe that I am entitled to the following relief:

- 1) Immediate Neurological evaluation/treatment at a facility NOT affiliated with H.D.S.P./N.D.O.C. at H.D.S.P./N.D.O.C.'s expense
- 2) Plaintiff receives copies of ALL medical findings and assessments at H.D.S.P./N.D.O.C.'s expense
- 3) \$500,000 in compensatory/punitive damages
- 4) Plaintiff reserves the right to further financial

I understand that a false statement or answer to any question in this complaint will subject me to penalties of perjury. I DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE UNITED STATES OF AMERICA THAT THE FOREGOING IS TRUE AND CORRECT. See 28 U.S.C. § 1746 and 18 U.S.C. § 1621.

\_\_\_\_\_  
(Name of Person who prepared or helped  
prepare this complaint if not Plaintiff)

  
(Signature of Plaintiff)

12/27/16  
(Date)

-----  
(Additional space if needed; identify what is being continued)

- relief once evaluation of Neurological/Psychological damages have been assessed.
- 5) Examined by an outside optometrist who specializes in brain injury patients at N.D.O.C.'s expense
  - 6) New eyeglasses prescribed by optometrist for Plaintiff at N.D.O.C.'s expense

CERTIFICATE OF SERVICE

I, Chet Duda, hereby certify that I am the petitioner in this matter and I am representing myself in propria persona.

On this 27<sup>th</sup> day of December, 2016, I served copies of the Civil Actions Complaint - 1983

in case number: \_\_\_\_\_ and placed said motion(s) in U.S. First Class Mail, postage pre-paid:


Address:

Sent to: Clerk - U.S. District Court  
District of Nevada  
333 Las Vegas Blvd. Room 1334  
Las Vegas, NV. 89101

DECLARATION UNDER PENALTY OF PERJURY

The undersigned declares under penalty of perjury that he is the petitioner in the above-entitled action, and he, the defendant has read the above CERTIFICATE OF SERVICE and that the information contained therein is true and correct. 28 U.S.C. §1746, 18 U.S.C. §1621.

Executed at High Desert State Prison  
on this 27 day of December, 2016.

  
Chet Duda

1107359  
DOP#

PETITIONER -- In Proper Person

AFFIRMATION  
Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding \_\_\_\_\_

Civil Actions Complaint - 1983  
(Title of Document)

filed in District Court Case number \_\_\_\_\_

☒ Does not contain the social security number of any person.

-OR-

☐ Contains the social security number of a person as required by:

A. A specific state or federal law, to wit:

\_\_\_\_\_  
(State specific law)

-or-

B. For the administration of a public program or for an application  
for a federal or state grant.

  
Signature Chet Duda 1107359

12/37/16  
Date

Chet Duda  
Print Name

Plaintiff  
Title

## NEVADA DEPARTMENT OF CORRECTIONS

**EMERGENCY  
GRIEVANCE FORM**NAME: Chet Duda I.D. NUMBER: 1107359INSTITUTION: H.D.S.P. UNIT: 2D14

GRIEVANT'S STATEMENT: We have no ventilation in our unit  
The heat in here is unbearable. The vent is ether  
clodded or closed. We have been complaining about  
this for 3 days with no results. My cellie has  
medical issues and I am 60 years old and  
neither of us can tolerate this to inhomane and  
cruel and unusual punishment

## SWORN DECLARATION UNDER PENALTY OF PERJURY

INMATE SIGNATURE: [Signature] DATE: 8/1/16 TIME: 9:50 AMRECEIVING STAFF SIGNATURE: CDO [Signature] CHOKE DATE: 8/1/16 TIME: 0952 ASUPERVISOR COMMENT/ACTION TAKEN ON EMERGENCY GRIEVANCE: Not an emergency  
file an informal grievance per AR 740SUPERVISOR SIGNATURE: [Signature] TITLE: SGT DATE: 8/1/16 TIME: 1115INMATE AGREES: [Signature] INMATE DISAGREES: \_\_\_\_\_INMATE SIGNATURE: [Signature] TIME: 1116 DATE: 8/1/16

FAILURE TO SIGN CONSTITUTES ABANDONMENT OF THE CLAIM. A FORMAL GRIEVANCE MAY BE  
 PURSUED IN THE EVENT THE INMATE DISAGREES.

Original: To inmate when complete, or attached to formal grievance  
 Canary: To Grievance Coordinator when complete  
 Pink: Inmate's initial receipt

RECEIVED

AUG 04 2015

HDSP

DOC-1564 (7/02)



# State of Nevada

## Department of Corrections

### INMATE GRIEVANCE REPORT

**ISSUE ID#** 20063029959

**ISSUE DATE:** 08/02/2016

INMATE NAME		NDOC ID	TRANSACTION TYPE		ASSIGNED TO
DUDA, CHESTER		1107359	RTRN_INF		DSTEVENS
LEVEL	TRANSACTION DATE	DAYS LEFT	FINDING	USER ID	STATUS
IF	11/02/2016	4	Denied	LBELT	A
<b>INMATE COMPLAINT</b>					
<b>OFFICIAL RESPONSE</b>					
<p>Inmate Duda,          You are no longer housed in Unit 2D 14, however Maintenance has been contacted to take a temperature measurement.</p> <p>Grievance resolved</p>					

GRIEVANCE RESPONDER

Report Name: NVRIGR  
 Reference Name: NOTIS-RPT-OR-0217.2  
 Run Date: NOV-02-16 03:05 PM



- A. Be brought to the attention of the Grievance Coordinator as soon as possible.
- B. The Grievance Coordinator should review all documentation supporting the alleged abuse to determine if abuse has occurred and forward a written recommendation to the Warden.
- C. The Warden should review and, if warranted, forward to the DDs with a recommendation that a Notice of Charges be issued.
- D. Only the DDs can write a Notice of Charges on the inmate if they determine an abuse of the grievance process.
- E. The DDs will forward the Notice of Charges to the Warden for processing through the inmate disciplinary process.
- F. A conduct violation of this nature is not a form of retaliation.
- G. An inmate may not be disciplined for filing a grievance related to alleged sexual abuse unless the Department has demonstrated that the inmate filed the grievance in bad faith.

#### **740.10 EMERGENCY GRIEVANCE PROCEDURE**

1. An Emergency Grievance (Form DOC-1564) received by any staff member shall be immediately delivered to the shift supervisor no later than is reasonable and necessary to prevent serious injury or a breach of security.
2. Any emergency grievance alleging that an inmate is subject to substantial risk of imminent sexual abuse shall be immediately forwarded to the highest ranking staff member on duty so that corrective action may be taken immediately.
  - A. The inmate shall receive a response to the emergency grievance within 48 hours, with a final facility decision about whether the inmate is in substantial risk of imminent sexual abuse within 5 calendar days.
  - B. The initial response, final decision and the action taken in response to the emergency grievance will be documented. Action taken can include, but not be limited to:
    - (1) Refer the information to the Inspector General's Office;
    - (2) Afford the inmate appropriate medical, mental health care; and
    - (3) Address any safety considerations.
2. The shift supervisor may confer with the on duty medical staff, Warden or Associate Warden and, if necessary, the DDs, to determine whether the grievance constitutes an emergency.

Exhibit 4

Log Number 2006.30.29959

NEVADA DEPARTMENT OF CORRECTIONS  
INFORMAL GRIEVANCE

NAME: Chet Duda I.D. NUMBER: 1107359  
INSTITUTION: H.D.S.P. UNIT: 2D14

GRIEVANT'S STATEMENT: After reading AR740 and talking with  
one of the maintenance staff workers I do not  
agree with the sergeant's comment.  
There is not nothing under AR740.10 "Emergency  
Grievance" which constitutes what is or is not an

SWORN DECLARATION UNDER PENALTY OF PERJURY

INMATE SIGNATURE: [Signature] DATE: 8/3/16 TIME: 20:13  
GRIEVANCE COORDINATOR SIGNATURE: [Signature] DATE: 8/4/16 TIME: 11:06a

GRIEVANCE RESPONSE: \_\_\_\_\_

CASEWORKER SIGNATURE: [Signature] DATE: 11.04.2016

☐ GRIEVANCE UPHELD ☐ GRIEVANCE DENIED ☐ ISSUE NOT GRIEVABLE PER AR 740

GRIEVANCE COORDINATOR APPROVAL: [Signature] DATE: 11/2/16

☐ INMATE AGREES ☒ INMATE DISAGREES

INMATE SIGNATURE: [Signature] DATE: 11/8/16

FAILURE TO SIGN CONSTITUTES ABANDONMENT OF THE CLAIM. A FIRST LEVEL GRIEVANCE MAY BE PURSUED IN THE EVENT THE INMATE DISAGREES.

Original: To inmate when complete, or attached to formal grievance  
Canary: To Grievance Coordinator  
Pink: Inmate's receipt when formal grievance filed  
Gold: Inmate's initial receipt

RECEIVED

AUG 04 2016

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NEVADA DEPARTMENT OF CORRECTIONS  
GRIEVANT'S STATEMENT CONTINUATION FORM

NAME: Chet Duda I.D. NUMBER: 1107359  
INSTITUTION: H.D.S.P. UNIT #: 2 D 14  
GRIEVANCE #: \_\_\_\_\_ GRIEVANCE LEVEL: Informal  
GRIEVANT'S STATEMENT CONTINUATION: PG. 1 OF 1

emergency situation. But it does state,  
"Reasonable and necessary to prevent serious  
injury. In addition, the maintenance staff  
stated ~~if~~ it only takes 30 seconds  
to open the vent door (which is closed)  
to fix the problem-circulation of air.

Four calls to maintenance from 2 different  
seniors 2 call ins from 2 different Sergeants  
one week later and a 30 sec fix has  
still not been performed. Maintenance has  
been in this unit several times over the last  
week and would not address the problem. And  
we are still baking in this oven with no  
circulation. This is inhumane, cruel,  
and unusual punishment which could  
be fixed in 30 seconds! - QQ -

Original: Attached to Grievance  
Pink: Inmate's Copy

RECEIVED

AUG 04 2016

HDSP

DOC - 3097 (01/02)



Chief Clerk 1107359  
PO Box 1650 HD3A  
Indian Springs, NV 89020

**CONFIDENTIAL**  
**LEGAL MAIL**

Chief Clerk U.S. District Court  
District of Nevada  
333 Las Vegas Blvd. - Rm. 1334  
Las Vegas, NV 89101

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